this issue the facts are clear that the fire occurred 31 hours after the armed forces had vacated the shed which they had earlier occupied.

The evidence shows that the only inflammable materials brought by the soldiers during their occupation of the shed were small-packed stoves (Exhibit D1) which were provided with low flame fuel lasting 8 hours for each use. The soldiers had done their last cooking at 5.30 p.m. on May 27, 1970. They went to bed by 7.00 p.m. except for the sentries, and by 4.00 a.m. the following day (May 28, 1970) they vacated the shed. There was a lapse of 10½ hours and in my opinion if there had been any fire started by cooking the previous day it would have been apparent long before they vacated the shed. This is taking into consideration that the fire could possibly be started by any spilled fuel on the sawdusts scattered around the shed, at the time.

PW2 said that he first saw the smoke coming out from the direction of his house or the sawmill at about 11.30 a.m. on the 28th of May 1970 while he was in his farm some distance away. He also said that on two earlier occasions he had seen smoke coming out from the compound of the sawmill, which turned out to be burnt sawdusts. From these evidence, it would be pure deduction that if there had been slow fire started from the sawdusts in the vicinity, assuming that it was caused by the soldiers before they left, PW2 would have seen the smoke even before he went to his farm on the 28th morning.

Considering the intervening period between the time when the soldiers vacated the shed and the time the fire took place at the sawmill, I would consider that there were opportunities for other factors to occur which have caused the fire to the sawmill.

For these reasons I find that the defendant was not negligent as alleged. As counsel on behalf of the plaintiff has assured the court that this action was not maintained for trespassing by the armed forces on the sawmill, I would therefore dismiss this claim with costs.

Claim dismissed.

Solicitors: *Ee & Lim.*

ABU BAKAR BIN HAJI YUSUF v. MOHAMED HAMZAH BIN HANAPIAH & ANOR.

[O.C.J. (Syed Agil Barakbah J.)
January 21, April 1 and April 22, 1978]

[Alor Star — Civil Suit No. 260 of 1977]

Practice and Procedure — Striking out proceedings — Discretionary power — Extent to which court entitled to exercise power — Whether affidavits admissible — Whether statement of defence vexatious — R.S.C. 1957, O. 19 r. 27 & O. 25 r. 4.

The plaintiffs applied in the Summons-in-Chambers that the Statement of Defence dated September 3, 1977 be struck out as being frivolous and vexatious and filed merely to delay a fair and early trial; that the plaintiffs be at liberty to enter interlocutory judgment and to proceed to assess damages against both the defendants and for costs and other reliefs. The plaintiffs, as administrators of the estate of the deceased, Hasbullah bin Abu Bakar, had filed a claim for damages against the defendants under sections 7 and 8 of the Civil Law Ordinance, 1956, for the benefit of the estate as well as for the benefit of the dependants of the deceased, who died from injuries suffered as a result of a motor accident alleged to have been caused by the negligent driving of the 1st defendant of motor-car KC 4850 as the servant or agent of the 2nd defendant on June 1, 1975.

Held: (1) the discretionary powers of the court in relation to striking out proceedings of this nature are provided by Order 19 rule 27 and Order 25 rule 4 of the Rules of the Supreme Court 1957. As a general rule, the order under the above rules is an interlocutory order. It is only in plain and obvious cases that recourse should be had to this summary procedure. The mere fact that the case is weak and unlikely to succeed is no ground for striking out a pleading;

(2) under Order 25 rule 4, where the allegation is that the Statement of Claim discloses no reasonable cause of action, only the plaint and its documents alone should be considered and all allegations in it should be assumed to be true. It must be tried upon the allegations contained in the pleading, and evidence in support of the applicant's case is not admissible;

(3) where the ground for striking out the Statement of Claim is that it discloses no reasonable cause of action, no affidavit is admissible. However, with regard to the second limb of the rule relating to frivolous and vexatious action, the inherent jurisdiction of the court remains unaffected under Order 19 rule 27. Affidavits are admissible not by virtue of the rule, but by virtue of the general jurisdiction of the court. The court is entitled to look at the affidavits as to the history of the matter, and if in that light, the action was vexatious or frivolous, the pleading could be struck out and the action dismissed. In this case taking into consideration the above principles, the court was entitled not only to look at the pleadings but also to the affidavits filed in order to enable the court to consider the application in its proper perspective;

(4) in this case it was premature at that stage to regard the negligent acts alleged by the defendant as being standard defence, in the absence of determining other relevant factors and surrounding circumstances immediately before the accident. It was for the defendant to prove the particulars of such negligence on the part of the deceased, as pleaded in the defence. In a claim for damages for negligent acts of this nature, it is not safe for the court to base on the sketch plan and Police Report alone in order to determine whether the defendant is solely negligent or the deceased was also liable for contributory negligence as pleaded in the Statement of Defence. Therefore it was necessary to hear extrinsic evidence in open court by calling witnesses who will have to be examined, cross-examined and re-examined with a view to deciding the whole issue fairly and justly.

Cases referred to:-

(1) *Peck* v. *Russel & Ors.* [1923] 4 F.M.S.L.R. 32.

(2) *Attorney-General of the Duchy of Lancaster* v. *London & North Western Railway Co.* [1892] 3 Ch. D. 274 @ 278.

(3) *Republic of Peru* v. *Peruvian Guano Co.* (1887) 36 Ch. D. 489.

(4) *Re Vernazza* [1959] 2 All E.R. 200.

(5) *Re Vernazza* [1960] 1 All E.R. 183.

CIVIL SUIT.

Baldev Singh for the plaintiffs.

Lal Harcharan Singh for the defendants.

Syed Agil Barakbah J.: In this Summons-in-Chambers, the plaintiffs apply that the Statement of Defence dated September 3, 1977 be struck out as being frivolous and vexatious and filed merely to delay a fair and early trial; that the plaintiffs be at liberty to enter interlocutory judgment and to proceed to assess damages against both the defendants; for costs and other reliefs. The plaintiffs, as administrators of the estate of the deceased, Hasbullah bin

Abu Bakar, have filed a claim for damages against the defendants under sections 7 and 8 of the Civil Law Ordinance, 1956, for the benefit of the estate as well as for the benefit of the dependants of the deceased, who died from injuries suffered as a result of a motor accident alleged to have been caused by the negligent driving of the 1st defendant of motor-car KC 4850 as servant or agent of the 2nd defendant on June 1, 1975.

Mr. Baldev Singh appeared for the plaintiffs and Mr. L.H. Singh, for the defendants. Having heard both arguments, I dismiss the application with costs. My views are as follows:—

The discretionary powers of the court in relation to striking out proceedings of this nature are provided by Order 19 rule 27 and Order 25 rule 4 of the Rules of the Supreme Court. Order 19 rule 27 empowers the court at any stage of the proceedings to strike out a pleading which may be unnecessary, scandalous or which may tend to prejudice, embarrass, or delay the fair trial. Order 25 rule 4 empowers the court to do likewise in cases where (1) the pleading discloses no reasonable cause of action, and (2) the action or defence is frivolous or vexatious. If the action is dismissed, judgment may be entered accordingly.

As a general rule, the order under the above is an interlocutory order. It is only in plain and obvious cases that recourse should be had to this summary procedure. The mere fact that the case is weak and unlikely to succeed is no ground for striking out a pleading.

The next point is to consider to what extent the court is entitled to examine while exercising its power. Under Order 25 rule 4, where the allegation is that the Statement of Claim discloses no reasonable cause of action, only the plaint and its documents alone should be considered and all allegations in it should be assumed to be true. That was held by the Court of Appeal in *Peck* v. *Russel & 2 Ors.*[1] In that case, the facts were that the question whether the plaint disclosed a cause of action became involved with other questions of fact and law based on the allegation of fraud. The rule has no application where the court is required to go through extrinsic evidence to show that the pleading is bad (see *Attorney-General of the Duchy of Lancaster* v. *London & North Western Railway Co.*[2]). It must be tried upon the allegations contained in the pleading, and evidence in support of the applicant's case is not admissible (see *Republic of Peru* v. *Peruvian Guano Co.*[3]).

The next question is whether affidavits are admissible under this rule. Where the ground for striking out the Statement of Claim is that it discloses no reasonable cause of action, no affidavit is admissible. That is clear from the terms of the rule itself (per Chitty J. in *Republic of Peru* v. *Peruvian Guano Co., supra*). However, with regard to the second limb of the rule relating to frivolous and vexatious action, the inherent jurisdiction of the court remains unaffected under Order 19 rule 27, Rules of the Supreme Court. Affidavits are admissible not by virtue of the rule. but by virtue of the general jurisdiction of the court (per Chitty J. in *Republic of Peru* v. *Peruvian Guano Co., supra*, at page 498). The court is entitled to look at the affidavits as to the history of the matter, and if in that light, the action was vexatious or frivolous, the pleading could be struck out and the action dismissed (per Lord Parker, C.J. in *Re Vernazza,*[4] as affirmed by the Court of Appeal[5]).

Taking into consideration the above principles, I dismiss the preliminary objection by Mr. L.H. Singh and hold that the affidavits filed by the applicants are admissible. I am entitled not only to look at the pleadings, but also to the affidavits filed in order to enable me to consider the application in its proper perspective.

The next issue is whether the Statement of Defence is vexatious or frivolous. The plaintiff's affidavit firstly attacks the Particulars of Negligence pleaded in the Statement of Defence of the 1st defendant, and maintains that they are mostly standard defence. He also refers to the Police Report lodged by the 1st defendant after the accident and contends that it amounts to an admission of negligence on the defendant's part. With respect, I cannot agree. Firstly, it is premature at this stage to accept that negligent acts alleged by the defendant are standard defence, in the absence of determining other relevant factors and surrounding circumstances immediately before the accident. It is for the defendant to prove the particulars of such negligence on the part of the deceased, as pleaded in the defence. In a claim for damages for negligent acts of this nature, it is not safe for the court to base on the sketch plan and Police Report alone in order to determine whether the defendant is solely negligent or the deceased was also liable for contributory negligence as pleaded at paragraph 3 of the Statement of Defence. My view is that it is necessary to hear extrinsic evidence in open court by calling witnessess who will have to be examined, cross-examined and re-examined with a view to deciding the whole issue fairly and justly. For this reason, I dismiss the application and order that the costs should be to respondents in any event.

Application dismissed.

Solicitors: *Triptipal Singh; L.H. Singh & Co.*

PUBLIC PROSECUTOR v. SU LIANG YU

[O.Cr.J. (Hashim Yeop A. Sani J.) May 3, 1978]

[Ipoh — Criminal Trials Nos. 11, 12 and 13 of 1976]

Criminal Law and Procedure — Public Prosecutor transfering case to High Court — No reasons given — Case ordered to be tried in Sessions Court — Criminal Procedure Code (F.M.S. Cap. 6), s. 418A — Courts of Judicature Act, 1964, Schedule, para. 12.

In this case a number of charges of alleged corruption was brought against the respondent and the Public Prosecutor had directed that the case be tried in the High Court. No reasons were given for the case to be heard in the High Court. The respondent is a Member of Parliament.

Held: as no reasons were given why the case should be heard in the High Court, the case should be transferred to the Sessions Court for trial.

Cases referred to:-

(1) *Public Prosecutor* v. *Su Liang Yu* [1976] 2 M.L.J. 128.

(2) *Datuk Haji Harun bin Haji Idris* v. *Public Prosecutor* [1977] 2 M.L.J. 155.